APPENDIX A

(Opinion of the Court of Appeals of the State of New York, dated April 11, 1968)

FULD, *Ch. J.*:

This appeal, taken upon constitutional grounds, poses the question—of first impression in this court—whether the City of New York may grant a dues "check-off" privilege to a union representing a majority of the municipal employees in a city-wide bargaining unit and yet deny such privilege to a minority union.[1]

In 1956, the City's Board of Estimate adopted a resolution which granted the check-off privilege to all organizations of city employees whose members authorized the necessary payroll deductions. At that time, the City did not recognize any union as an agent for collective bargaining. Later, the City began to recognize unions as exclusive bargaining agents if they were chosen by a majority of the employees in an appropriate bargaining unit. Even then, however, the Board of Estimate resolution extending the check-off privilege to all unions alike was not changed and the City continued to give effect to its provisions.

In April, 1967, the City modified its union recognition policies by means of an executive order of the Mayor. The order provided (1) that appropriate bargaining units for municipal employees were to be established on a city-wide basis or, in some instances, on a departmental basis and (2) that the organization chosen by a majority of the employees in each such unit was to be recognized as the exclusive bargaining representative for all employees in the unit.

The Mayor proposes to round out this policy by means of a further executive order which will give the privilege

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[1] In labor relations parlance, the "check-off" is the practice whereby an employer deducts the amount of a union member's dues from his pay, usually on the employee's express authorization, and remits it directly to the union.

of dues check-off solely to the exclusive bargaining agents and will withdraw it from all other unions. It is the declared opinion of the Mayor and the City's Director of Labor Relations that this plan for a restricted check-off policy, common in private industry, will afford the majority representatives a form of "union security", will increase their prestige and responsibility and will, in consequence, stabilize the collective bargaining process.

Local 832 (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) and District Council 37 (American Federation of State, County and Municipal Employees, AFL-CIO) are two unions which include persons employed by the City in nonsupervisory clerical titles. District Council 37 has been recognized by the City as the exclusive bargaining representative for such employees; under the proposed plan it will thus have the exclusive benefit of the dues check-off. Local 832, on the other hand, is a minority union and, accordingly, it will be deprived, under the proposed plan, of the check-off privilege it has enjoyed since 1956.[2] Strongly objecting, the latter organization, Local 832, has commenced this article 78 proceeding—through its president and several of its members on behalf of themselves and all others similarly situated—to require the City to continue the check-off of dues to it, and to enjoin the City from granting exclusive check-off privileges to District Council 37 or any other labor organization.[3] The court at Special Term dismissed the petition

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[2] District Council 37 has majority representation status in city-wide units covering over 57,000 employees and in department-wide units covering some 1,300 more. In sharp contrast, Local 832, having an overall membership in the neighborhood of 1,700, represents only about 1,000 nonsupervisory clerical workers.

[3] The court at Special Term found that the City had undertaken to issue the proposed check-off order in a collective bargaining agreement with District Council 37 and that such agreement constitutes a "final determination" sufficient to provide the basis for review under CPLR article 78. (See *Matter of Lipsett* v. *Gillette*, 12 N Y 2d 162, 166.)

and the Appellate Division unanimously affirmed the resulting order.

Under the 1963 New York City Charter (§ 8), the Mayor is authorized to "exercise all the powers vested in the city, except as otherwise provided by law." He is the successor to the residual powers originally possessed by the Board of Estimate under a similarly worded provision of the 1938 New York City Charter (§ 70) in effect in 1956, when that body adopted the "non-discriminatory" check-off policy. (See, also, New York City Charter [1963], § 1142.) The City—and, thus, the Mayor on its behalf—is empowered to enter into contracts, to regulate the terms of employment and compensation of city employees and to determine the manner of transacting the City's business and affairs (General City Law, § 20, subds. 1, 17, 19; § 23, subd. 1). The Charter also specifically authorizes the Mayor to supervise city offices and departments, fix salaries, adopt wage plans and prescribe rules governing working conditions (New York City Charter [1963], §§ 123, 124, 813 [subd. 1]). His executive power and discretion thus amply extend to and encompass the proposed action here under review, and no further legislative sanction is required.

Contrary to the petitioners' contention, the Mayor's discretion to decide which employee organization should have check-off privileges is not curtailed by section 93-b of the General Municipal Law. That section provides, in its subdivision 1, that a municipality is "authorized" to deduct dues from its employees' pay.[4] It is unmistakably per-

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[4] Section 93-b, subdivision 1, reads, in part, as follows:

"The fiscal or disbursing officer of every municipal corporation * * * is hereby authorized to deduct from the * * * salary of any employee of such corporation * * * such amount that such employee may specify in writing filed with such * * * officer for the payment of dues in a duly organized association or organization of civil service employees and to transmit the sum so deducted to the said * * * organization. Any such written authorization may be withdrawn by such employee or member at any time by filing written notice of such withdrawal with [such] officer."

missive, not obligatory. It does not control a municipality's selection of the unions, if any, to which it may grant the privilege of the check-off; and it certainly does not mandate the continuance of the check-off to minority unions. The only requirements which the section imposes are that, if a municipality does adopt the check-off for any union, (1) it must obtain an employee's written consent before deducting his dues; (2) it must allow the employee to withdraw that consent at any time; and (3) the procedure must be made available only to organizations of civil service employees. These conditions are met in the Mayor's proposed order.

That this State's legislative policy is not antagonistic to the check-off plan embodied in the proposed executive order is manifest, also, from the terms of the Public Employees' Fair Employment Act (Civil Service Law, art. 14; L. 1967, ch. 392, known also as the Taylor Act). As the court noted in the course of its opinion at Special Term, that statute—which did not take effect until some months after he announced his decision—explicitly gives majority unions of public employees the right to have their members' check-off requests honored, and is silent concerning the right to such check-off on behalf of minority unions (Civil Service Law, § 208). Although our decision in this case will have prospective effect, we need not decide whether the Taylor Act is applicable; it is sufficient to observe that, if the Act does apply, it can only reinforce the decision which we reached on the basis of the pre-existing law. In short, the Mayor's proposed policy is plainly consistent with the scheme set forth in the Taylor Act for according recognition, and a degree of union security, to bargaining agents for public employees; to mention but one provision, section 208 makes it mandatory upon a public employer to extend a "right" of membership dues deduction to a union "certified" or "recognized" pursuant to the statute. (See, also, Civil Service Law, §§ 204, 212.) Whatever discretion a public employer may have, under the Act, to grant the check-off

to a minority union not recognized as a bargaining agent—and that question is not before us—the employer is plainly under no obligation to do so.

Since we find no statutory obstacle in the way of the City's proposed check-off policy, we turn to a consideration of whether that policy would, as Local 832 urges, deprive it of due process or equal protection of the laws. We agree with the courts below that it would not. The requirements of due process are satisfied as long as the challenged measure is reasonably related to the attainment of a permissible objective. (See, e.g., *Railway Employes' Dept.* v. *Hanson,* 351 U.S. 225, 233-235; *Virginian Ry.* v. *Federation,* 300 U.S. 515, 558-559.) Similarly, the standards of equal protection are met if a classification, or a distinction among classes, has some reasonable basis. (See, e.g., *Baxstrom* v. *Herold,* 383 U.S. 107, 111; *Morey* v. *Doud,* 354 U.S. 457, 464-464; *Bucho Holding Co.* v. *State Rent Comm.,* 11 N Y 2d 469, 477.)

In the case before us, the existence of such a reasonable relationship and basis is apparent. The maintenance of stability in the relations between the City and employee organizations as well as the avoidance of devasting work stoppages, are major responsibilities of the city administration. The Mayor seeks to further these objectives by introducing into city labor relations a practice which has become commonplace in private industry and in the labor policies of other governmental bodies. For example, the Federal Railway Labor Act specifically empowers the carrier and the exclusive bargaining agent to agree on an exclusive dues check-off (45 U.S. Code, § 152 Eleventh [b]); the practice is authorized for organizations of Federal civil service employees (Code of Fed. Reg., tit. 5, § 550.304 [a][5]; Executive Order 10988, §§ 5, 6, Jan. 17, 1962, 27 Federal Register, p. 551); and it is also followed—according to the record before us—by the New York City Housing Authority and the New York City Transit Authority. The City program is in accord with national labor

policy, which has been built on the premise that a majority organization is the most effective vehicle for improving wages, hours and working conditions. (See *NLRB* v. *Allis-Chalmers,* 388 U.S. 175, 180.) Be that as it may, we may not consider the merits or the ultimate wisdom of the policy (see *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 488); it is enough, as already indicated, that a method of implementing union security, so widely utilized and so long tested as the one proposed by the Mayor, may not be said to lack a reasonable basis or to be unrelated to the City's legitimate purposes.

The petitioners also argue that the withdrawal of the dues check-off will weaken their minority union to the point of threatening its very existence. They will thus be deprived, they assert—pointing to such decisions as *Bates* v. *Little Rock* (361 U.S. 516), *N.A.C.C.P.* v. *Alabama* (357 U.S. 449) and *Thomas* v. *Collins* (323 U.S. 516)[5]—of their right of freedom of association guaranteed by the First and Fourteenth Amendments of the Federal Constitution and by Article I of the State Constitution. Their claim lacks substance. Nothing in the City's labor policy denies members of the petitioners' union the right to meet, to speak, to publish, to proselytize and to collect dues by the means employed by thousands of organizations of all kinds, that do not have the benefit of a dues check-off. Neither the First Amendment nor any other constitutional provision entitles them to the special aid of the City's collection and disbursing facilities.

The order appealed from should be affirmed, with costs.

* * *

Order affirmed with costs. Opinion by Fuld, Ch. J. All concur.

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[5] The petitioners' reliance on these decisions is misplaced. The cited cases involved attempts by states to hinder organizations by some affirmative prohibition upon, or intrusion into, their activities. There is not the slightest suggestion that a state or other body must provide services to an organization to help it maintain its competitive position with its rivals.

APPENDIX B

(Opinion of the New York Supreme Court, New York County, at Special Term, dated July 25, 1967)

ABRAHAM J. GELLINOFF, JUSTICE

This proceeding and the companion proceeding in Feinstein v. The City of New York are brought pursuant to CPLR, article 78, against the City of New York, its Mayor and other named City officials. The petitioners in the respective proceedings are Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a local labor union, suing by its president, and several of its members who are employed by the City in *non-supervisory clerical titles;* and Local 237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a local labor union, suing by its president, and several of its members who are employed by the City as *hospital "aides."* Each proceeding is brought on behalf of the petitioner and all other City employees similarly situated.

The controversy concerns the practice of "check-off," whereby the amount of an employee's union dues is deducted from his wages by his employer, pursuant to his written authorization, and transmitted by the employer to the union. Such a practice for the check-off of the union dues of City employees was first authorized by the City through a resolution adopted by the Board of Estimate in 1956. That resolution provided that any union or other organization of City employees could avail itself of the privilege of check-off by filing written authorizations therefor, signed by the particular employees, which were to be at all times subject to revocation by such employees; but it was specifically prescribed that such privilege was to be made "available to all unions, without discrimination." At the time of the adoption of that resolution, the City did not

extend recognition to any union or other employee organization for purposes of collective bargaining, and permitted qualified employees organizations to represent their members only for the limited purpose of conferring with a City department head concerning grievances and working conditions.

In 1956 the City adopted a new Employee Relations Program under which collective bargaining on behalf of all the employees in an appropriate bargaining unit was thereafter to be conducted solely by the employee organization chosen for that purpose by a majority of the employees in such unit. No change was made, however, in the provisions of the 1956 resolution extending the privilege of check-off to all unions alike, without regard to whether they represented a majority or a minority of the employees in the particular bargaining unit.

In April, 1967 the mayor promulgated a new executive order on the subject of bargaining between the city and labor unions, to take effect June 1, 1967. This new order, among other things, differentiates between "City-wide majority representative" and "Departmental majority representative," between "City-wide bargaining unit" and "Departmental bargaining unit. In addition, and as part of his plan to improve the city's employee relations program and collective bargaining process, the mayor is about to issue a further executive order dealing with the "check-off."

Under the contemplated order, every employee organization which is freely chosen as the exclusive bargaining representative by the majority of the employees in a city-wide bargaining unit will be afforded the privilege of dues check-off. This will not be a matter of contract but will be made available upon the designation or certification of such status. Dues checking off privileges of all other organizations in any such city-wide bargaining unit will be discontinued during the period of such city-wide majority representation status.

Appendix B

In the absence of city-wide majority representation for a particular bargaining unit, the freely chosen departmental majority representative of the employees in such category will be similarly granted the dues check-off privilege, but only until a city-wide majority representative is chosen. The privilege will be withheld from every other organization in the departmental bargaining unit during such departmental majority representative status.

In the absence of both city-wide and departmental majority status in a bargaining unit, every qualified employee organization having members in such unit will have the privilege of such dues check-off, but only until a city-wide or departmental majority representative is chosen for the unit.

In no event would dues be deducted from an employee's salary except upon his written authorization for such deduction; and such authorization may be revoked at any time.

The mayor has entered into collective bargaining agreements providing for such exclusive check-off arrangements with District Council 37, the city-wide majority representative of city employees holding positions in the *non-supervisory clerical* titles, and with Local 420, the city-wide majority representative of certain classes of *hospital "aides"* employed by the city; and has committed himself to promulgate the above-described executive order in order to implement the exclusive check-off provisions in such agreements. District Council 37 and Local 420 are both affiliates of the American Federation of State, County and Municipal Employees, AFL-CIO.

The petitioning local unions, which respectively represent a minority of the employees in such classifications on a city-wide basis, seek to restrain the city officials from effectuating this new exclusive check-off policy. They demand judgment that respondents must continue to check-off dues to petitioners, and judgment that respondents are without authority to grant exclusive dues check-off privileges to

District Council 37 or Local 420 or any other labor organization. The validity of the collective bargaining agreements to the effect that the mayor will promulgate the pending implementing executive order is thus in issue. These collective bargaining agreements constitute a "final determination" subject to review under article 78 of the CPLR (Matter of Lipsett v. Gillette, 12 N. Y. 2d 162, 166 [1962]). The instant proceedings were commenced before the mayor's pending executive order could be issued, and the parties have stipulated that "no steps would be taken to discontinue the existing system of dues check-off pending the determination of the proceedings by Special Term."

Petitioners challenge the contemplated executive order for exclusive check-off as beyond the purview of the mayor's executive authority, as inconsistent with controlling statutory provisions, as contrary to the civil service provisions of the state constitution, and as violative of the federal and state constitutional guarantees of due process and equal protection. There is no merit in petitioners' contentions.

The original check-off resolution, in 1956, was adopted by the board of estimate in the exercise of the residual power vested in it by the 1938 city charter; such residual power encompassed "all the powers vested in the city except as otherwise provided by law" (N. Y. City Charter [1938] 70; see Matter of Moriarity v. Kennedy, 20 Misc. 2d 593, 596-7). Under the present city charter this residual power is vested in the mayor (N. Y. City Charter [1963] sections 8a, 1142). The mayor is thus vested with the broad general powers conferred upon the city by statute: to enter into contracts, to regulate the selections, terms of employment and compensation of city employees and to determine the manner of transacting the city's business and affairs (see Gen. City Law, section 20, subdivisions 1, 17, 19; id., section 23, subdivision 1). The charter also specifically empowers the mayor to supervise city offices and departments, to fix salaries, to administer budget appropriations, to

adopt wage plans and to prescribe rules governing working conditions (see N. Y. City Charter [1963] sections 123, 124, 813, subdivision i). It is therefore clear that the mayor's power to prescribe the conditions of a check-off is squarely within the ambit of the broad powers conferred upon him by the charter.

There is no substance to petitioners' contention that the regulation of check-off is a legislative function beyond the purview of the mayor's executive powers. The board of estimate's original 1956 resolution authorizing check-off of union dues of city employees was a valid exercise of the residual power then vested in it by the 1938 charter and did not require legislative implementation (cf. Matter of Moriarity v. Kennedy, 20 Misc. 2d 593, 596-7). Such residual power, being now vested in the mayor, likewise does not require legislative implementation.

Of course, the exercise by the mayor of any power which he does possess is necessarily conditioned on its not being inconsistent with any applicable state enactment (Wholesale Laundry Bd. v. City of New York, 17 A. D. 2d 327, 12 N. Y. 2d 998). Petitioners therefore, also urge that the intended exclusive check-off executive order is squarely in conflict with General Municipal Law section 93-b, subdivision 1. That section, which was first enacted in 1958, two years after the adoption by the board of estimate of the original check-off resolution, provides, in pertinent part, that "[t]he fiscal or disbursing officer of every municipal corporation * * * is hereby *authorized* to deduct from the wage or salary of any *employee* of such municipal corporation * * * such amount that such employee may specify in writing filed with such fiscal or disbursing officer for the payment of dues in a duly organized association or organization of civil service employees and to transmit the sum so deducted to the said association or organization." It further provides that "[*a*]*ny* such written authorization may be withdrawn by such employee or member at any time by filing written no-

tice of such withdrawal with the fiscal or disbursing officer" (Italics by court). Petitioners' contention, in essence, seems to be that the Legislature, by virtue of section 93-b (supra), preempted the subject matter of check-off of municipal employees' union dues, that such check-offs may now be made only, as authorized by section 93-b, and that the clear implication of the statute is that any municipality adopting the practice of check-off must make it available on a nondiscriminatory basis to "any employee" who files a written authorization therefor as therein provided.

It is clear, however, as noted, that the city's power to adopt and regulate the practice of check-off does not rest on section 93-b, being encompassed, instead, in the grant to municipalities of general powers for the regulation of their internal affairs, previously made by the Legislature (Gen. City Law, section 20). Moreover, there is no indication in section 93-b of any purpose to occupy or preempt the entire field of check-off (Cf. McMillen v. Browne, 14 N. Y. 2d 326, 333). The section is thus of a purely permissive nature and does not confer any right on any employee to require compliance with his request for the check-off of his union dues (Matter of McLaughlin v. Niagara Falls Bd. of Ed., 38 Misc. 2d 143). Its effect is merely to require that, if a municipality does decide to exercise its power to make payroll deductions on account of the union dues of any of its employees, it must adhere to the limitations specified in the section (Cf. Matter of Devita v. Scher, 52 Misc. 2d 138). The only limitations mentioned in the section are that there must be on file with the fiscal or disbursing officer a written authorization by the employee for such a deduction, that the deduction be "for the payment of dues in a duly organized association or organization of civil service employees," and that such authorization be subject to withdrawal by the employee at any time. There is no requirement in the section that every employee be granted the right to have such a deduction made at his request.

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It has been declared, that where, as the court finds is the case here, the state has not occupied or preempted an entire field, a municipality which is empowered to act in that field may, in spite of general regulations by the state, adopt additional regulations or requirements, not inconsistent with the state enactment, where warranted by special local conditions (see Matter of Kress & Co. v. Dept. of Health, 283 N. Y. 55, 59). There would thus be nothing to prevent a municipality from attaching additional conditions to the availability of check-off beyond those specified in section 93-b, as, for example, that the particular employee organization be one that meets certain reasonable standards. Here the city has imposed the further condition that the dues to be deducted be for membership in the employee organization that has been duly selected as the majority representative for all the employees in the applicable bargaining unit. The imposition of that condition contravenes neither the letter nor the intent of section 93-b.

It may be noted, in passing, that the recently enacted Public Employees' Fair Employment Act, effective September 1, 1967, and not here applicable, gives majority unions of public employees the right to have their members' check-off requests honored; but the statute is silent concerning the right to check-off on behalf of minority unions (Civil Service Law, section 208, as added by L. 1967, ch. 392).

Petitioners' further contention that the challenged exclusive check-off procedure is in conflict with the constitutional and statutory provisions governing appointments, tenure and promotions in civil service (N. Y. Const., Art. 5, section 6; Civil Service Law, sections 61, 95, 115), is not persuasive. In point of fact, the practice of check-off, whether on an exclusive or a non-exclusive basis, can in no way operate to affect or prejudice the employee's civil service rights. No deduction may be made from the employee's salary or wages under the city's intended check-off program unless the employee himself consents thereto, and

he remains free to revoke such consent at any time, without in any way affecting his tenure.

Finally it remains to be considered whether the intended executive order runs afoul of the constitutional guarantees of due process and equal protection (U. S. Const., Amend. XIV; N. Y. Const., Art. 1, secs. 6, 11). The requirements of due process are satisfied so long as the challenged measure is reasonably related to the attainment of a permissible objective (Railway Employes' Dept. v. Hanson, 351 U. S. 225, 233-5; Virginia Ry. Co. v. System Federation, 300 U. S. 515, 558-9; Labor Relations Board v. Jones & Laughlin, 301 U. S. 1, 43-5). Similarly, the equal protection clause requires no more than that a classification made have "some reasonable basis" (Morey v. Doud, 354 U.S. 457, 463-4; Bucho Holding Co. v. State Rent Comm., 11 N. Y. 2d 469, 477), and that "a distinction made have some relevance to the purpose for which the classification is made" (Baxstrom v. Herold, 383 U.S. 107, 111). The courts may not strike down governmental measures merely "because they may be unwise, improvident or out of harmony with a particular school of thought" (Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 488).

We are here dealing with the highly sensitive area of employer-employee relations affecting the city's huge working force of over 250,000 employees. Present experience attests to the untold havoc that can follow in the wake of the disruption of vital city services consequent upon employee work stoppages and to the crucial importance of adopting suitable programs for the maintenance of stable and equitable relations between the city and its employees. To that end, the city's employee relations program has since 1958 embodied the policy of according exclusive recognition for purposes of collective bargaining to the duly selected majority employee representatives in designated appropriate bargaining units. That practice is of undoubted

validity (cf. Matter of Kleinman v. McCoy, 19 N. Y. 2d 202; Civil Service Forum v. New York City Transit Authority, 4 A. D. 2d 117, 128, affd. 4 N. Y. 2d 866).

The city has now determined that the attainment of the high objectives of its employee relations program demands that the employee organization duly chosen by a majority of the employees in a designated bargaining unit to serve as the exclusive representative of all of the employees in such unit for purposes of bargaining and grievance procedure, should also be accorded the exclusive privilege of check-off, so long as it maintains its majority representative status. The stated purpose is to strengthen the role of the selected organization as majority representative. Any employee remains free to refuse to sign a check-off authorization, or to revoke a previously executed authorization, and he may continue his membership in a minority employee organization or choose not to belong to any union.

As the Appellate Division has aptly declared in an analogous situation (Matter of Patrolmen's Benevolent Assn. v. Wagner, 8 A. D. 2d 369, 373, affd. 7 N. Y. 2d 813, cert. den. 363 U. S. 810):

> "It is not for the courts to establish or evaluate administrative policies pertaining to the relation between the City of New York and its employee. We may only adjudicate the power of the respondents [City officials] and the extent thereof in the promulgation of such policies. The courts may intrude only to a very limited extent upon the policy-making powers of the respondent Mayor of the City of New York which involve complex, difficult and controversial matters in a very sensitive area or employer-employee relations between the city and its thousands of employees."

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There appears to be ample precedent for the new exclusive check-off policy here under attack. A similar policy has been adopted by Congress in the Railway Labor Act (45 U. S. C. A., sec. 152, Eleventh [b], [c]). It is there specifically provided that dues deduction agreement affecting raiway employees subject to that act may be entered into only between the carrier and the labor organization which represents a majority of the employees in the particular craft or class, and for the exclusive benefit of that labor organization. Those provisions have been consistently enforced by the federal courts, without any suggestion of doubt as to their validity (e.g., Switchmen's Union of North America v. Southern Pacific Co., 253 F. 2d 81, 84 [9th Cir.], cert. den. 358 U. S. 818; Brotherhood of Loc. Fire & Eng. v. Northern Pac. Ry. Co., 274 F. 2d 641 [8th Cir.].

A similar policy prevails in the federal civil service, under which a governmental department is permitted to enter into a dues check-off agreement, effecting the employees in a particular bargaining unit, only with the employee organization representing a majority of the employees in that unit, where such a majority representative has been duly selected (see Code of Fed. Reg., Title 5, sec. 550.304 [a] [5]; Executive Order 10988, sec. 5, January 17, 1962, 27 Fed. Register, p. 551). The practice of according the privilege of exclusive check-off to majority employee representatives is also followed by the New York City Housing Authority and the New York City Transit Authority. Indeed, it appears that one of the petitioner unions, Local 237, itself has an exclusive check-off arrangement with the New York City Housing Authority embracing authority employees in various bargaining units for which that union is the majority representative.

It is unnecessary to determine whether, and to what extent, if any, similar practices prevail in the area of labor

management relations in private industry—a matter on which the parties are in dispute. There is no doubt, however, that the check-off is a widely practiced "means of implementing union security" (see Industrial Union of Union of Shipbuilding Wkrs. v. N. L. R. B., 320 F. 2d 615, 619 [3d Cir.]) and is a proper subject for collective bargaining under the National Labor Relations Act and for inclusion in a union-management contract (see National Labor Relations Board v. Reed & Prince Mfg. Co., 205 F. 2d 131, 136 [1st Cir.]; H. K. Porter Co., Inc., 153 N. L. R. B. No. 119, 59 L. R. R. M. 1462). One early decision has interpreted the National Labor Relations Act as precluding a majority union from obtaining the special advantage of exclusive check-off arrangements as against a rival, minority union (see Hughes Tool Co. v. N. L. R. B., 147 F. 2d 69, 74 [5th Cir.]). We need not, however, consider whether that case accurately reflects the current state of the federal law, since we are not here concerned with the Federal Act or its proper interpretation. The question before this court is not one of interpretation of the challenged measures, but of their constitutionality; and no such issue was either considered or decided in Hughes Tool Company v. National Labor Relations Board, supra.

Actually, majority unions have available to them, under the National Labor Relations Act, union security devices far more extreme than those involving exclusive check-off. Thus, a majority union may enter into an agreement with an employer providing for a union shop, under which all the employees in the particular bargaining unit, including those who belong to a rival union, must within a specified period of time "join and maintain membership in the union designated as the bargaining representative or suffer discharge" (See Pennsylvania Railroad Co. v. Rychlik, 352 U. S. 430, 493). The United States Supreme Court has squarely upheld the validity of the Congressional legis-

lation sanctioning such agreements for a union shop (Railway Employes' Dept. v. Hanson, supra, 351 U. S. 225, 233-5; see Radio Officers' Union v. N. L. R. B., 347 U. S. 17, 40-41; Cf. Colgage-Palmolive Peet Co. v. N. L. R. B., 338 U. S. 355, sustaining the earlier Federal legislation which permitted agreement for a closed shop).

There is all the more reason for applying the rationale of those decisions to more moderate union security measures such as those at bar, under which the special advantage given to the majority union consists not as under the union shop, of the right to demand and receive dues from employees who would prefer to be non-union or to belong to a different union, but merely of facilitating the collection of dues from those who have freely joined the union of their choice. Whether such measures are wise or provident or best calculated to achieve the objective of stable and equitable employer-employee relations, is not the concern of the courts (See Williamson v. Lee Optical of Okla., Inc., supra, 348 U. S. 483, 488; Matter of Patrolmen's Benev. Ass'n v. Wagner, supra, 8 A. D. 2d 369, 373). "The task of the judiciary ends once it appears that the * * * measure adopted is relevant or appropriate" to the attainment of a permissible goal (Cf. Railway Employees' Dept. v. Hanson, supra, 351 U. S. 225, 234). This court cannot say that the measures here in question do not meet that test or that they do not satisfy the requirements of due process and equal protection (Cf. Civil Service Forum v. New York City Transit Authority, supra, 4 A. D. 2d 117, 128).

No question as to the validity of exclusive check-off appears to have been decided in Lipsett v. Gillette (12 N.Y. 2d 162), on which both petitioners and the City rely. Petitioners also cite Mugford v. City of Baltimore (185 Md. 266) where it was held that the City of Baltimore lacked the power either to grant the privilege of exclusive check-

off to a majority union of municipal employees or even to recognize that union as the exclusive representative of the employees in the particular bargaining unit for purposes of collective bargaining. The rationale of that decision is plainly at odds with the approach taken by the courts of this State (Cf., e.g., Matter of Kleinman v. McCoy, supra, 19 N.Y. 2d 202; Civil Service Forum v. New York City Transit Authority, supra, 4 A D 2d 117, 128).

The court arrives at the conclusion that the exclusive check-off provisions of the two collective bargaining agreements involved herein are valid and that the exclusive check-off provisions in the intended Executive Order in implementation of the exclusive check-off provisions of the agreements are valid. Accordingly, the relief prayed for in each of the petitions is, in all respects, denied and the proceedings are dismissed.

Settle order.

A. D. G.,
J.S.C.

Dated, July 25, 1967

Filed
Aug 15 1967
New York County Clerk's Office

APPENDIX C

(Judgment of the Court of Appeals of the State of New York, dated April 11, 1968)

No. 19

COURT OF APPEALS

STATE OF NEW YORK, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 11th day of April in the year of our Lord one thousand nine hundred and sixty-eight, before the Judges of said Court.

WITNESS,

THE HON. STANLEY H. FULD,
Chief Judge, *Presiding*

RAYMOND J. CANNON, *Clerk.*

REMITTITUR—April 11, 1968

1. No. 19 68

In the Matter of

HERBERT S. BAUCH as President of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, & ors., &c.,

Appellants,

vs.

THE CITY OF NEW YORK, & ors., &c.,

Respondents.

BE IT REMEMBERED, That on the 27th day of January in the year of our Lord one thousand nine hundred and

sixty-eight, Herbert S. Bauch, as President of Local 832, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, & ors., &c., the appellants in this cause, came here unto the Court of Appeals, by Cohen & Weiss, their attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And The City of New York, & ors., &c., the respondents in said cause, afterwards appeared in said Court of Appeals by J. Lee Rankin, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard this cause argued by Mr. Samuel J. Cohen, of counsel for the appellants, and by Pauline K. Berger, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, accord-

ing to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

RAYMOND J. CANNON,
Clerk of the Court of Appeals
of the State of New York.

Court of Appeals, Clerk's Office,
Albany, April 11, 1968.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON,
Clerk.

(SEAL)